

**Jose Rivera**

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**From:** Thomas, William [William.Thomas@hud.gov]  
**Sent:** Tuesday, April 21, 2009 3:01 PM  
**To:** Jose Rivera  
**Subject:** FW: ILS-32439; 11/49 Realty LLC and Simone Development Company LLC; Hunters View Condominium; I-09-097 and ILS-32438 and Borden East River Realty LLC and Simone Development Company LLC; One Hunters Point Condominium; I-09-096

Jose:

Here is what was sent. I transposed the numbers. Correct numbers are now on the e-mail.

Please confirm if you get the e-mail.

*William J. Thomas*

William J. Thomas, MBA, Certified Paralegal  
Consumer Protection Compliance Specialist  
Office of RESPA/Interstate Land Sales  
Department of Housing and Urban Development  
Room 9154  
451 7th Street SW  
Washington DC 20410  
Phone: 202-402-3006  
Fax: 202-708-4559

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---

**From:** Thomas, William  
**Sent:** Monday, April 20, 2009 3:35 PM  
**To:** 'jrivera@dagll.com'  
**Subject:** ILS-32439; 11/49 Realty LLC and Simone Development Company LLC; Hunters View Condominium; I-09-097 and ILS-32438 and Borden East River Realty LLC and Simone Development Company LLC; One Hunters Point Condominium; I-09-096

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ILS-32439; 11/49 Realty LLC and Simone Development Company LLC; Hunters View Condominium; I-09-097

ILS-32438 and Borden East River Realty LLC and Simone Development Company LLC; One Hunters Point Condominium; I-09-096

Instead of sending a formal deficiency, based upon our mutual working together in the last several weeks, this e-mail is being sent to offer the ability to modify the responses to the complaints filed as well as to modify the requests for Advisory Opinions.

## RESPONSE AS TO THE COMPLAINTS

In my cursory review the documentation regarding the complaints, I did not see any mention of the news releases being used on the website as advertising materials. Please address these materials in your response.

Also, in the narration, the issue as to common promotional plan was given an almost off-hand treatment. Based on the information provided, these two developments have been marketed under one common promotional plan.

Next, the discussion within the provided explanation addresses what is happening as of the date when the jurisdictional questionnaire was received in 2009. However, the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 *et seq.*, (the "Act") applies as of the date of the first offering of sale. The date when the Public Offering Statement was approved by New York should be the point of beginning in the attempt to defend a failure to register a subdivision and file a Statement of Record pursuant to 15 U.S.C. 1704(a) and 24 CFR 1710.20(a) based upon an exemption.

24 CFR 1710.4(d) does indicate that the eligibility for exemptions available under §§1710.5 through 1710.14 is self-determining. With the exception of the exemptions available under §§1710.15 and 1710.16, a Developer is not required to file notice with or obtain the approval of the Secretary in order to take advantage of an exemption. If a Developer does elect to take advantage of an exemption, the Developer is responsible for maintaining records to demonstrate that the requirements of the exemption have been met.

In complying with the providing of material pursuant to 24 CFR 1710.4(d) there is no prescribed format for submitting this information. The Developer should at least cite in a comprehensive statement and by description the applicable statutory or regulatory basis for the exemption or lack of jurisdiction and thoroughly explain how the sale of the lots or condominium units either satisfies the requirements for exemption or falls outside the purview of the Act at the time of the first offering of sale to the public.

Also, as supporting documentation, the following documentation should also be provided for review: (1) a copy of the recorded plat of the entire subdivision (if one is not recorded and unrecorded one is acceptable) or condominium with the lots or units subject to the exemption request delineated thereon; (2) a sample copy of the contract and sample Deed used for conveyances to purchasers; (3) a clear and specific statement detailing how the proposed sales of lots or units subject to the exemption substantially complies with the available exemption provisions; (4) a description of the method by which the lots have been and will be promoted and to which population centers the promotion has been and will be directed; (5) a copy of the Declaration of Condominium, By-Laws, and Amendments (if recorded, provide copies of the recorded documents); (6) a copy of the Offering Plan or Offering Statement if required by the local jurisdiction; and (7) a statement and evidence showing how sales which have

occurred have complied with the anti-fraud provisions of 24 CFR 1710.4 (b) and (c).

In your responses as contained in your April 2, 2009 response to the Department's jurisdictional questionnaire dated March 6, 2009, as well as the supplemental material provided in your letter dated April 13, 2009, the vast majority of information needed for the Department to make a determination regarding the complaints was provided. However, what was lacking was a clear and specific statement detailing how each development was able to be exempt in the first place and how all of the sales of units within the condominium (both past and future) substantially complied with the available exemption provisions.

Further, Answer 14 of Part II of the questionnaire was not fully or properly responded to. For each of the developments, list the full names, mailing addresses (both physical and e-mail), and telephone numbers (both voice and fax) of each person, partnership, corporation or entity owning a 10% or greater interest in the subdivision. Include all principals as defined under 24 CFR 1710.1. Please amend your response to include the requested information in a logical order without having to refer to exhibits, annotations or other material.

Based upon items discovered in the researching of the material provided for each of the two developments, the Offering Plans presented for both projects did not contain the Exhibit B to the Declaration which would have defined the Units being created. Based upon the information contained within the Declarations, the Parking Units and the Roof Terrace Units appear to be defined within the Declaration as full Units and not simply as general or limited common elements or divided interests which are assigned or licensed to specific parties. The Roof Terrace Units and the Parking Units appear to be separate conveyable Units as defined under 24 CFR 1710.1. Please provide a copy from the local land Records of the recorded Declarations for both Hunters View Condominium and One Hunters Point Condominium as part of your amended response for the Department's further analysis.

#### ***One Hunters Point Condominium***

This original 132 Residential Unit with 26 Roof Terrace Units and 25 Parking Units condominium project was approved for Offering by the State of New York on September 11, 2007. Therefore, September 11, 2007 is the date where the analysis for One Hunters Point Condominium should begin in an attempt to defend a failure to register a subdivision and file a Statement of Record pursuant to 15 U.S.C. 1704(a) and 24 CFR 1710.20(a) based upon an exemption. Also, if the project was to be registered there would have been failures to provide a Property Report pursuant to 15 U.S.C. §1703(a)(1)(b) and 24 CFR 1710.3 which would then have a result of conducting an unlawful sales practice pursuant to 24 CFR 1715.20(b).

#### ***Hunters View Condominium***

This original 73 Residential Unit with 15 Roof Terrace Units and 37 Parking Units condominium project was approved for Offering by the State of New York on September 11, 2007. Therefore, September 11, 2007 is the date where the analysis for One Hunters Point Condominium should begin in an attempt to defend a failure to register a subdivision and file a Statement of Record pursuant to 15 U.S.C. 1704(a) and 24 CFR 1710.20(a) based upon an exemption. Also, if the project was to be registered there would have been failures to provide a Property Report pursuant to 15 U.S.C. §1703(a)(1)(b) and 24 CFR 1710.3 which would then have a result of conducting an unlawful sales practice pursuant to 24 CFR 1715.20(b).

Deciding if the inclusion of all of the Units within Hunters View Condominium in the need for registration with the Department would be primarily based upon a common promotional plan. Based upon the information gathered prior to the sending of the jurisdictional questionnaire, there was a strong

indication that such a plan was in existence. Please provide the full name and location of the sales broker and/or location of the sales office. If the sales staff are employees or independent contractors of the Developer, please indicate so. Also, if there is a rationale for the exemption of this development from the count toward registration, the response should adequately address the issue.

Please amend your responses as to both developments accordingly. For ease, break up the response and provide a separate response for each development separately.

#### REQUEST FOR ADVISORY OPINIONS

24CFR 1710.17(b)(2) mandates that the Developer provide a comprehensive description of the conditions and operations of the offering. Despite there being no prescribed format for submitting this information, the Developer should at least cite the applicable statutory or regulatory basis for the exemption or lack of jurisdiction and thoroughly explain how the offering either satisfies the requirements for exemption or falls outside the purview of the Act.

Since two Advisory Opinions are needed, **a separate *Comprehensive Statement*** should be provided for each of the projects. Each project was approved for Offering by the State of New York on September 11, 2007. Therefore, September 11, 2007 is the date where the analysis for each *Comprehensive Statement* should begin and be the date any claimed exemption would have been first applicable.

As to supporting documentation, since a plat of the entire condominium subdivision with the Units subject to the exemption request delineated thereon and a copy of the contract to be used for Unit sales was provided within the Public Offering Statement within the response material for the complaints There is no need to supply them for the Advisory Opinion file.

Besides citing the applicable statutory or regulatory basis for the exemption or lack of jurisdiction and thoroughly explaining how each the offerings in both condominium subdivisions either satisfies the requirements for exemption or falls outside the purview of the Act, provide within each *Comprehensive Statement* a clear and specific statement ***detailing*** exactly how the sales of past units and the sales of future units subject to the exemption request substantially complies with one of the available exemption provisions. Also, provide within each *Comprehensive Statement* a description of the method by which the units have been and will be promoted and to which population centers the promotion has been and will be directed. Also, provide within each *Comprehensive Statement* how both past unit sales complied with and how future sales will comply with the anti-fraud provisions of 24 CFR § 710.4 (b) and (c).

You can mail the requested documentation to me at the following address:

Office of RESPA/Interstate Land Sales  
Department of Housing and Urban Development  
Room 9154  
451 7th Street SW  
Washington DC 20410

Please provide the requested information to the undersigned within 20 days of the receipt of this letter.

As to the complaints, upon receipt of your information, I will contact you should I need further information or upon the completion of my investigation.

By way of reply, please confirm receipt of this e-mail.

You can call me, William J. Thomas, on (202) 402-3006 if you have questions. My e-mail address is william.thomas@hud.gov.

*William J. Thomas*

William J. Thomas, MBA, Certified Paralegal  
Consumer Protection Compliance Specialist  
Office of RESPA/Interstate Land Sales  
Department of Housing and Urban Development  
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**Jose Rivera**

---

**From:** Jose Rivera  
**Sent:** Tuesday, April 21, 2009 3:53 PM  
**To:** 'Thomas, William'  
**Subject:** RE: E-mail from 4-20-09


William.

I did receive your email. My computer automatically deposited it into my deleted items folder.

That has happened to a few emails and I am having my IT person look at.

Thanks.

Best regards,  
Jose

 cid:image002.jpg@01C91CC7.5F57A9A0

Jose M. Rivera, Esq., Partner  
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(212) 564-9800 Ext. 414 Fax (212) 564-9802  
Website: [www.dagll.com](http://www.dagll.com)

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**From:** Thomas, William [mailto:William.Thomas@hud.gov]  
**Sent:** Tuesday, April 21, 2009 2:32 PM  
**To:** Jose Rivera  
**Subject:** E-mail from 4-20-09

Did you receive my e-mail from yesterday 4-20-09? If so, please confirm receipt.

Please note that 24 CFR 1701.4(d) should actual be 24 CFR 1710.4(d)

*William J. Thomas*

William J. Thomas, MBA, Certified Paralegal  
Consumer Protection Compliance Specialist  
Office of RESPA/Interstate Land Sales  
Department of Housing and Urban Development  
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**Jose Rivera**

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**Sent:** Tuesday, April 21, 2009 4:01 PM  
**To:** Jose Rivera  
**Subject:** RE: E-mail from 4-20-09

Thanks.

My sent basket did show it went out. I was about to call my IT

*William J. Thomas*

William J. Thomas, MBA, Certified Paralegal  
Consumer Protection Compliance Specialist  
Office of RESPA/Interstate Land Sales  
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Thanks.

Best regards,  
Jose

HP000220

7/27/2009



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Please note that 24 CFR 1701.4(d) should actual be **24 CFR 1710.4(d)**

*William J. Thomas*

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Consumer Protection Compliance Specialist  
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7/27/2009

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**Jose Rivera**

---

**From:** Thomas, William [William.Thomas@hud.gov]  
**Sent:** Wednesday, April 22, 2009 1:04 PM  
**To:** Jose Rivera  
**Subject:** ILS-32438 and Borden East River Realty LLC and Simone Development Company LLC; One Hunters Point Condominium; I-09-133.

Jose M Rivera, Esquire, Partner  
D'Agostino, Levine & Landesman, L.L.P.  
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(212) 564-9800 Ext. 414  
Fax (212) 564-9802  
email: [jrivera@dagll.com](mailto:jrivera@dagll.com)

ILS-32438 and Borden East River Realty LLC and Simone Development Company LLC; One Hunters Point Condominium; I-09-133.

Jose:

I am in receipt of your letter dated April 21, 2009 regarding Sandor D. Krauss, Esquire of The Law Offices of Sandor D. Krauss P.C. and the complaint of David M. Eskew and Kiera LoBreglio.

Our office opens up a separate complaint once we receive them. A complaint acknowledgment letter for this complaint is in the process of being sent out to you for this complaint.

Your response for complaint I-09-96 can be used for this case I-09-133 and for case I-09-131 and the complaint recently made by Gene Henry Matthew.

Thanks.

*William J. Thomas*

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Consumer Protection Compliance Specialist  
Office of RESPA/Interstate Land Sales  
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7/27/2009

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**Jose Rivera**

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**From:** Thomas, William [William.Thomas@hud.gov]  
**Sent:** Wednesday, April 22, 2009 3:46 PM  
**To:** Jose Rivera; 'ledermanb@verizon.net'  
**Subject:** ILS-32439; 11/49 Realty LLC and Simone Development Company LLC; Hunters View Condominium; I-09-097 and ILS-32438 and Borden East River Realty LLC and Simone Development Company LLC; One Hunters Point Condominium; I-09-096; I-09-131 and I-09-133

Bruce H. Lederman, Esquire  
Jose M Rivera, Esquire, Partner  
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[ledermanb@verizon.net](mailto:ledermanb@verizon.net)

ILS-32439; 11/49 Realty LLC and Simone Development Company LLC; Hunters View Condominium; I-09-097

ILS-32438 and Borden East River Realty LLC and Simone Development Company LLC; One Hunters Point Condominium; I-09-096; I-09-131 and I-09-133

It was a pleasure to talk to the two of you again.

I appreciate the perspective that you have in representing your client as well as your recognition of the Department's position of addressing the public interest of the American consumer.

You indicated that you may be providing 24 CFR 1710.4(d) evidence of the exemptions at the time of first offering which they believe they are entitled to. However, as we discussed, in the event that your clients' amended response to the complaints involves a decision to address a potential settlement negotiation, please request that the complaints be transitioned to the Office of Finance and Regulatory Compliance Program Compliance Division for negotiation. At that point, I will prepare the detailed Case Summary and transfer the cases to that Division.

Also, since a potential outcome in the negotiation process may involve complete registration of both projects, you should also address the issues regarding the Advisory Opinions requested and paid for. Other than assembly of the materials for review and preparing the additional paragraphs in the e-mail dated April 20, 2009, to date, no real work has yet to be initiated. I was awaiting your amended request for the Advisory Opinion based on the April 20, 2009 e-mail. If you desire to withdraw your request for both properties, you can do so. If you do, please advise in a separate request letter for each subdivision. Once I receive your formal request, the process can then begin to get the moneys refunded.

Thank you for your and your client's past cooperation and the current willingness to proceed in a spirit of cooperation for both your client's and the public's interest.

*William J. Thomas*

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Consumer Protection Compliance Specialist  
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